

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

George Lee Tomlin,)	Civil Action No.: 9:12-3258-MGL
)	
Petitioner,)	
)	
v.)	<u>OPINION AND ORDER</u>
)	
Alan Wilson, South Carolina Attorney General's)	
Office; Levern Cohen, Warden of Ridgeland)	
Correctional Institution,)	
)	
Respondent.)	
_____)	

On November 7, 2012¹, Petitioner George Lee Tomlin (“Petitioner”), an inmate in the South Carolina Department of Corrections and housed at the Ridgeland Correctional Institution in Ridgeland, South Carolina, filed the instant petition for a *writ of habeas corpus* pursuant to 28 U.S.C. § 2241. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation (“Report”).

On January 17, 2014, the Magistrate Judge issued a Report and Recommendation recommending that the court grant Respondent’s motion to deny habeas, deny Petitioner’s motion to grant habeas, and dismiss Petitioner’s petition. (ECF No. 30). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. *Id.* at 15. Plaintiff has filed no objections and, after two extension of time, the time for doing so expired on March 13, 2014.

¹This filing date reflects that the envelope containing the petition was stamped as having been received on November 7, 2012, by the Ridgeland Correctional Institution Mailroom. (ECF No.1-1.) *Houston v. Lack*, 487 U.S. 266 (1988) (holding prisoner's pleading is considered filed when filed with prison authorities for forwarding to the district court).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error. Accordingly, the court adopts and incorporates the Report and Recommendation (ECF No. 30) by reference into this order. It is therefore ORDERED that Respondent’s motion for summary judgment (ECF No. 23) is GRANTED, Petitioner’s motions for summary judgment (ECF Nos. 21, 29) are DENIED, and the petition for writ of habeas corpus is DISMISSED.

Certificate of Appealability

The governing law provides that:

(c) (2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c) (3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies the standard by demonstrating that reasonable jurists

would find this court's assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller–El v. Cockrell*, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir.2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is DENIED.

IT IS SO ORDERED.

/s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
March 14, 2014